

SEEKONK ZONING BOARD REGULAR MEETING

MINUTES October 24, 2011

Present: Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read (4 members present and voting) Absent: Jeffrey Creamer

7:00 Chairman Edward F. Grouke called the meeting to order.

This is the meeting of the Town of Seekonk Zoning Board of Appeals, October 24, 2011. First I am going to read the Rules and Regulations. I am going to read each petition as it was advertised and call upon the petitioner or their representative to present their case. All testimony, including the testimony and statements of the petitioner and/or the representatives or witnesses will be taken under oath. We will hear from anyone in the audience to speak either in favor of or against the petition or with any questions. At the close of the evidence, we have a discussion and we also usually make a decision on the same night although we are not required to do that. We may take a petition under advisement and give a decision at a later date. It is our practice to decide it on the night of the hearing. It is reduced to writing and filed with the town clerk within 14 days. There is an appeal that is available to the Superior Court by the petitioner or other parties who have the proper legal standing and has to apply with the very strict time limitations. That appeal is governed by very strict time limitations. If anyone is considering an appeal, they have to be very careful to meet the time limitations that are set forth in the law.

Tonight we unexpectedly have only 4 members. We will only hear 2 of the 6 petitions. We are going to read the ones that are not going to go forward.

2011-20 Scott & Sherry Allen, 400 Warren Avenue, Seekonk, MA, Owners and Petitioners, requesting an appeal of the Inspector of Buildings Decision and, if necessary a **Special Permit** under Section 6.2 to allow a private kennel at 400 Warren Avenue, Plat 1, Lot 27 in an R-3 Zone containing .56 acres in Seekonk. (Continued from September 19, 2011)

We have communication from the petitioner requesting that this matter be continued to our next date which we have scheduled for tomorrow October 25, 2011. It is possible, if they cannot make tomorrow it could be continued until the next meeting.

2011-27 Andrew & Elizabeth Gresh, 41 Apple Orchard Lane, Seekonk, MA, Owner and Petitioner, requesting an **Appeal** of the Inspector of Buildings Decision and if necessary **Variance** under Sections 6.3, 6.6, and a **Special Permit** under Section 5.3, to install an in ground pool at 41 Apple Orchard Lane, Plat 7, Lot 308 in an R-3 Zone containing 26,501 ± square feet.

We have a letter requesting a continuance until tomorrow night, October 25, 2011.

2011-28 Cumberland Farms, 100 Crossing Blvd, Framingham, MA, Owner, by Carolyn A. Parker, 3 Lorion Avenue, Worcester, MA 01606 Petitioner, requesting an **Appeal** of the Inspector of Buildings Decision to allow the replacement of the price signs on the canopy fascia to LED price signs at 1455 Fall River Avenue, Plat 1, Lot 101 in a Local Business Zone containing .74 acres ±.

We have a letter from Carolyn Parker requesting a continuance until tomorrow night, October 25, 2011.

2011-19 The Town of Seekonk, 100 Peck Street, Seekonk, MA, Owners and Petitioners, requesting a **Comprehensive Permit**, pursuant to Massachusetts General Law Chapter 40B, and the Town of Seekonk, MA Zoning Board of Appeals Comprehensive Permit Regulations to allow construction of one (1) single family home at 0 Gude Street (corner of Gude Street & Taunton Avenue), Plat 12, Lots 440 & 441 in a Local Business Zone containing 6,800 square feet. (Continued from September 20, 2011)

We have a letter from Mr. Hansen, Town Planner, requesting a continuance until tomorrow, October 25, 2011.

K. Rondeau made a motion to continue the public hearings for 2011-19, 2011-20, 2011-27 and 2011-28 until tomorrow night October 25, 2011 at 7:00 pm, seconded by G. Sagar, **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, and R. Read.

VOTE: (Approve 4-0)

The next matter on the agenda is:

2011-23 Town of Seekonk, a Municipal Corporation with its principal business address at 100 Peck Street, Seekonk, MA, 02771, Owner, by Sharonlyne Hall, Animal Control Officer, Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, to nullify, amend or supersede decisions #80-8, #80-23, and #81-7 and request if necessary, a **Special Permit** under Sections 5.2.1, 5.3 and, if necessary Section 6.2.13 to allow the relocation of an existing shed, the addition of a 14' x 24' car port, and a 42'x 30' addition to the existing Animal Shelter at 100 Peck Street, Plat 18, Lot 11 in a R-2 Zone containing 21.7 acres. (Continued from September 19, 2011)

David Bray Caputo & Wick, Ltd., sworn in. I presented the petition in front of you at the previous meeting. You had asked that we do an investigation into the construction of the next accessory building, there was a meeting with members of animal shelter, I believe all that has taken place and if there are any other questions, I would be happy to answer them.

Ch. Groucke I understand those things have taken place, do we have any specific questions for Mr. Bray?

G. Sagar Bob Read and I volunteered to meet with the Animal Shelter Building Committee. We met with them on two occasions. I have to say some of the research we did, I have been educated a lot on animals and how they are supposed to be kept. We came up with a suggested set of stipulations for the animal shelter going forward. I would like to point out that on the application, it talks about “to amend/nullify or supersede decisions”, none of those three decisions were ever recorded at the Registry of Deeds so as far as I am concerned, they do not even exist. I don’t know if you agree with that interpretation.

Ch Groucke Maybe we could say something like “if necessary this decision could supersede...”

G Sagar The suggested proposed stipulations Bob and I came up with, and we met with the Animal Shelter Committee, do you want me to read them into the record?

Ch. Groucke Yes.

G. Sagar These are stipulations for the approval of this petition:

1. This petition and these stipulations shall replace and supersede all previous Zoning Board of Appeals approvals associated with the Animal Shelter Buildings and their use;
2. The existing access road shall be maintained as the primary access to the shelter;
3. Construction, re-construction, or renovations shall architecturally match to the extent possible, creating relationship to the neighborhood that is in harmony with the existing town Hall. Final plans and specifications shall be submitted to the Zoning Board of Appeals for approvals; That is the same language we used for the Senior Center.
4. The Animal Shelter Building shall not exceed 3,000 square feet in size, without additional Zoning Board of Appeals approval. Accessory Buildings shall not exceed 300 square feet in total, and may only be used for storage, which shall be kept indoors; Currently I believe the existing building is about 1500 square feet and they are proposing a 1200 square foot addition for a total of about 2700 square feet. This way if there was an addition or a total replacement of the building, this permit would allow them to go up to 3000 square feet. Currently, they are not allowed to use the shed they have on site, so this would allow them to have accessory building for storage not to exceed 10% of the total of the shelter of 3,000 or 300 square feet for the accessory.
5. Adequate access and security lighting shall be provided and maintained to the exterior; I was quite pleased to come into the parking lot tonight and see that the place was lit up. Then through our

investigation, going on line and investigating different state agencies we came up with:

6. The Animal Shelter shall conform to and operate at all times in accordance with all laws, by-laws, regulations, and rules as applicable and under the guidelines of the commonwealth of Massachusetts, Department of Agricultural Resources;
7. Code of Massachusetts Regulations 330 CMR 12:00, particularly 12:03 & 12:04, is here-by adopted as the "Best Management Practice" for the operation of the Animal Shelter. The big one, going forward is in 1988, when they received their initial approval for the shelter, they were mandated to keep all their animals indoors which has created, as far as I am concerned an un-humane setting for them and an unhealthy setting for the animals and for the employees.
8. Animals may be kept outside unsupervised but confined between the hours of 8am-4pm, Monday-Friday, and 9am-4pm, Saturday, Sunday & Holidays. Animals may be allowed outside at other times providing they are supervised;
9. Animals who make excessive noises, i.e. barking, howling, etc, who create a nuisance, shall be kept indoors;
10. No animals shall be "Boarded" outside, overnight.

These were reviewed by both Bob (Read) and I and Animal Shelter Building Committee and everybody seems to be in agreement.

Ch Groucke Is there anyone to speak in favor of petition? No response. Is there anyone to speak in opposition of the petition? No response.

G. Sagar There are a couple of other points I would like to make. From our discussion when we met with them, because of the adequacy of the parcel of land that is there, and to Keith's point, of why don't we tear this thing down and start over again. This makes a lot of sense. We have since learned that the building is not ADA compliable, it would make sense that if that initiative was taken, there is more than adequate land to push it farther north and it would create additional land area too if the senior center moves forward. When we wrote up the proposed stipulations, we figured the 3,000 square feet would give them extra space to move forward. This gives them the latitude to go in either direction. I have to say that for years I have pulled into this parking lot and saw the animal shelter over there and I was really unaware, and this is not criticism of anybody, but of the deplorable condition that building is and the whole environment. I really compliment everybody that has been involved in that, especially the employees and the volunteers that work there. The majority of funds that operate that place are privately raised through the community and not supported by the Town. Hats off to all the people that do a great job that they do over there and at a minimum we can give them an adequate facility to work in.

K Rondeau I think the two members of the board did an outstanding job researching this, as well as the Animal Shelter Building Committee and Sharron the Animal Control Officer.

R Read If we approve this, as it is tonight, does that mean that the possibilities that Keith and Gary suggested tonight can't be done, moving it back?

G Sagar It can be done. Yes, they can do it they would be allowed with the stipulations we came up with to building a 3000 sq ft building for animal control, that could be two additions or new construction.

R. Read I have to say, I hope that happens, I hope the town can come up with the funds to help this thing out and do the job right. As Gary said so well, despite the work the employees have done on it in the last few years, the place is still a mess. The only way it can be solved is to start all over again. However, I will vote for this as is.

Ch Groucke We have to vote on what is presented to us and then the stipulations are written to allow for some changes by another action at Town Meeting or Selectmen or whatever the case might be.

G. Sagar made a motion to close the public hearing and uphold the decision of the Building Inspector, seconded by K. Rondeau, **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, Keith Rondeau, and R. Read.

VOTE: (Approve 4-0)

G. Sagar made a motion to approve the petition for the animal shelter and include the 10 stipulations previously read into the record as part of the permit, seconded by K. Rondeau, **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, Keith Rondeau, and R. Read.

VOTE: (Approve 4-0)

G Sagar One last thing, I received a copy of the agenda for the Selectmen's meeting, it is on the agenda by one of the Selectmen to reopen the town meeting warrant to request a warrant article for the appropriation of \$100,000 towards this building and this effort. Would we be out of line to vote to recommend to the Selectmen that we think they should move forward with that?

Ch. Groucke No, I don't think so since it is something that has been presented to us and we can comment on it in an advisory way.

G. Sagar made a motion to make that recommendation to the BOS, seconded by K. Rondeau based upon what has been heard tonight and the testimony of the

deplorable conditions that are there at this time that the employees are working under and the animals are living under, **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, Keith Rondeau, and R. Read.

VOTE: (Approve 4-0)

Patricia Cloutier Chairperson for the Animal Shelter Building Committee. I just want to thank everybody. I know some of the board members went above and beyond the call of duty, you have been very helpful. We are very passionate about what we are doing, thank you for your support we really appreciate it.

2011-26 Doris L. Abraham, 29 Westbrook Drive, Seekonk, MA, Owner and Petitioner, requesting an **Appeal** of the Inspector of Buildings Decision to allow separate lot exemption at 0 Wheaton Avenue, Plat 4, Lot 113 in an R-1 Zone containing 10,000 ± square feet.

Russell Weddell Attorney representing Doris Abraham 63 Winthrop Street, Taunton Ma. Sworn in. This is an appeal of the decision of the Zoning Enforcement Officer dated August 2, 2011 which found that lot 43 on Wheaton Avenue, which is the lot in question on this appeal and that lot is depicted on two maps you have before you. One being the subdivision plan “Maplewood Terrace Section Two” and the other being assessors’ map which is shown as 113. The Building Inspector or Zoning Enforcement Officer determined that lot 43 is a nonconforming lot and not eligible for separate lot exemption, thus, essentially a nonbuildable lot. By way of background, lot 43 is in an R-1 residential district which was created as part of a subdivision plan, which I told you earlier, “Maplewood Terrace Section Two” that was approved by the Seekonk Planning Board on May 25, 1955. Mrs. Abraham, with her late husband acquired lot 36 as also shown on that plan and lived in a house on that lot since August 1955. On September 26, 1974, Mr. and Mrs. Abraham acquired lot 43. Lot 43 as you can see on the map abuts lot 36 along a portion of the rear of the property. When they purchased lot 43, it was the Abrahams intention to maintain that lot as a separate lot for use by their daughters should they decide to build on that lot or if they chose not to do so, sell it to another party. In fact, in 1982 the Abrahams specifically requested a determination from the Town of Seekonk, specifically, the then Zoning Enforcement Officer Mr. Motta, as the status of lot 43. In a letter dated July 12, 1982, which I think you also have, the then Seekonk Building Inspector Mr. Motta, wrote to Mr. Abraham, *“This is to certify that lot 113, plat 4 Wheaton Avenue,”* which is what we are talking about, *“is part of the subdivision approved by the Seekonk Planning Board on May 25, 1955. Therefore it has grandfather*

rights and a building permit may be issued at any time and if sold a new owner shall also build.”

Ch. Grouke Mr. Weddell, I don't think we had that in our packets. If you could please circulate it then we could give it back to you.

R. Weddell Not a problem. Since purchasing that lot the Abrahams have maintained that lot as a separate lot. The lot has always been taxed by the Town of Seekonk as a separate buildable lot. Most recently, however, Mrs. Abraham, at the direction of a real estate broker who was going to list the lot for sale, asked the current Zoning Enforcement Officer for a determination as to the status of that lot. She was told that because that lot was in common ownership with lot 36, it would not be eligible for separate lot exemption and of course we filed this appeal after she issued her decision. Essentially my (inaudible) of the Zoning Enforcement Officer is twofold. Ms. McNeil in making her determination found that because those lots were held in common ownership from 1974 going forward that under the merger document the lot would not be eligible for separate lot exemption under Ch 40a, Section 6. I don't quarrel her determination that you've got however, our position is that under the local bylaws in the Town of Seekonk, specifically section 5.4.3 that lot 43 still enjoys grandfather status and is buildable. When the increase in lot sizes in the Zoning Bylaws occurred in 1963, lots 36 and lot 43 were not held in common ownership; they did not purchase lot 43 until after 1974 so they are grandfathered. Under your local bylaws, section 5.4.3 states that "Any increase in area, frontage, width or yard or depth requirements of this By-Law shall not apply to a lot for single and two-family residential use which, at the time of recording or endorsement, whichever occurs sooner, was not held in common ownership with any adjoining land, conformed to then existing requirements and has less than the proposed requirements but at least 5,000 square feet of area and 50' of frontage." that the provisions of the Bylaws shall not apply if the lots were not held in common ownership at the time in 1963 when the increase of square footage took place in the bylaws, these two lots were not in common ownership. (inaudible) I think that my position on the local bylaws, specifically this section, is backed up by the letter you have from Mr. Motta who wrote in 1982 that lot 43 does have separate lot exemption and it can be built on if somebody applies for a building permit at any time in the future. He was determining the provision of the local bylaw at that time and issued that decision, no appeal was ever taken from that determination and that should be binding. Secondly, these two lots have always been maintained as separate lots with separate identities as evidenced by Mrs. Abraham's intent. She is here tonight to tell the Board why she and her husband bought the lot that their intention was to have that lot for their two daughters if one of them wanted to build. If not, they would sell it to a third party and that is why they specifically asked Mr. Motta at that time in 1982 for a written letter as to the status of that lot. They have paid taxes on that lot for the past 37 years, it has always been taxed separately. In fact, Mrs. Abraham brought copies of the most recent tax bills for those two lots. There are two separate bills for each lot. She has been paying for

37 years on a separate buildable lot, that is how it has been taxed and she has always paid those taxes.

Mr. Weddell presented to the Board copies of the taxes on both lots and the Board discussed with Mr. Weddell the tax records and the amount paid through the years and it appeared the lots were both being taxed as “buildable” based on their discussion.

G. Sagar For the record I asked that question of our clerk and Chris checked with the Assessor’s today and it is listed as potentially developable land.

R. Weddell For those reasons I believe she is grandfathered as having a separate lot. Mrs. Abraham is here tonight if you would like to ask her some questions. She had two daughters and one has passed away a few years ago, she has one surviving daughter that is why they bought the lot in the first place. The broker she hired said to get a letter from the Building Inspector and she was surprised to hear this.

Ch Groucke I personally do not feel it is necessary for your client to testify but are there any questions from the board for Mr. Weddell or Mrs. Abraham? I will poll the audience. Is there anyone in favor of the petition? No response. Is there anyone in opposition to the petition? No response. Are there any questions about this petition? No response.

K Rondeau I would be interested to find out how the Building Inspector came to the conclusion that the two lots were merged, I want to make sure we haven’t missed anything.

R. Weddell She decided under Chapter 40A Section 6 under the Merger Doctrine. I don’t (inaudible) that decision but I feel that the local bylaws as I read (inaudible).

G. Sagar So you feel that the local bylaw helps your argument.

R. Weddell Yes I do because Mr. Motta when he was interpreting the bylaw gave a letter to my client and determined that it is a buildable lot and always will be.

G. Sagar Was the Building Inspector made aware of that letter?

R. Weddell That I don’t know.

Ch. Groucke The current Building Inspector, did you show her that letter?

R. Weddell I sent her a letter requesting a determination but...

G. Sagar But she did not see that letter?

R. Weddell I would have to check and see, I don’t remember if I sent the letter to her.

Ch. Grouke It seems to me that the letter is pretty conclusive, if you ask me. Like you said, it was never appealed by anybody.

R. Read I agree.

G Sagar It shows how important it is to keep good records. My feelings are like yours Ted. That says it all, she is paying for a buildable lot and I think she has the right to expect that what a Town Official told her back in '82 should carry forward.

K. Rondeau Absolutely.

Ch. Grouke Not to mention the fact that as Mr. Weddell said, in 1963, they didn't own the two lots so there was nothing to merge at that time. Are there any further questions?

G. Sagar made a motion to close the public hearing, seconded by R. Read, **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, and R. Read.

VOTE: (Approve 4-0)

G. Sagar made a motion to overturn the decision of the Building Inspector, seconded by R. Read,

Further discussion

K. Rondeau Before we vote, I just want to be clear. Mr. and Mrs. Abraham bought this property, the first lot, lot 36, in 1955. The zoning changed in 1963 and then they bought this lot in 1974 and they have been paying separate taxes since 1974 on this lot and two separate deeds.

G. Sagar They were acquired as two separate transactions, there are two separate deeds.

K. Rondeau I just want to make sure they were acquired as two separate transactions.

Ch. Grouke They were acquired in two separate transactions.

G. Sagar It has had a separate identity all its life basically.

R Read I would say regardless of Mr. Motta's letter, it still would qualify I would think.

G. Sagar I think his letter only reinforces...

R. Read It certainly does.

K. Rondeau They were taxed separately, they were recorded separately (inaudible)

Ch. Groucke Okay, there was a motion to overturn the decision of the Building Inspector and a second. Is there any further discussion? All in favor of the motion?

and so voted unanimously by: Ch. Edward F. Groucke, Gary Sagar, Keith Rondeau, and R. Read.

VOTE: (Approve 4-0)

Approval of Minutes:

K. Rondeau made a motion to table the approval of minutes, seconded by G. Sagar, **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, Keith Rondeau, R. Read.

VOTE: (Approve 4-0)

G. Sagar made a motion to adjourn the meeting, seconded by K Rondeau, **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, Keith Rondeau, R. Read

VOTE: (Approve 4-0)

Meeting adjourned at 7:45 PM

Respectfully submitted by:

Christina Testa, Secretary